

**REMARKS**

Claims 1-17 are currently pending for the Examiner's consideration, with claims 1, 6, and 11 being the independent claims. Applicant acknowledges with appreciation the Examiner's indication that claims 16 and 17 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims.

***Rejection Under 35 U.S.C. § 102(b)***

The Examiner has rejected claims 1-15 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,849,228 to Yamamoto *et al.* ("the '228 patent"). Applicant respectfully disagrees with the position taken by the Examiner because the '228 patent does not disclose or suggest the subject matter of independent claims 1, 6, and 11, or the more narrow claims depending therefrom.

The '228 patent is directed to making a microcapsule for injectable sustained release from a copolymer of about 50-100 mole percent of lactic acid and about 50-0 mole percent of glycolic acid. Each of independent claims 1, 6, and 11 recites the use of a copolymer of D,L-lactide and glycolide that comprises greater than 40 and less than 50 mole percent lactide and greater than 50 and less than 60 mole percent glycolide. The '228 patent does not disclose or suggest the claimed copolymer of D,L-lactide and glycolide that comprises greater than 40 and *less than* 50 mole percent lactide and *greater than* 50 and less than 60 mole percent glycolide. Rather, the '228 patent discloses essentially the opposite mole percent of lactide and glycolide from that claimed. Moreover, each of independent claims 1, 6, and 11 recites a glycolate monomer block length of less than about 3. The '228 patent does not disclose or suggest the claimed copolymer that has an average glycolate monomer block length of less than about 3. For at least the foregoing reasons, the '228 patent does not anticipate independent claims 1, 6, and 11, or the more narrow claims depending therefrom, and the rejection cannot properly be maintained.

**CONCLUSION**

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

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Respectfully submitted,

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